

NOTICE OF FINAL AGENCY ACTION

SUBJECT: Payment for Nursing Facility Services

AGENCY: Massachusetts Executive Office of Health and Human Services

SUMMARY: Emergency adoption of 101 CMR 206.00: Standard Payments to Nursing Facilities

The Executive Office of Health and Human Services (EOHHS) is adopting, on an emergency basis, amendments to 101 CMR 206.00: *Standard Payments to Nursing Facilities*. The amendments rebase the nursing facility rates to 2019, establish new and amend existing incentive payments and rate add-ons, and include updates to COVID-19-related payments. The rates established by these amendments apply to dates of service beginning October 1, 2021.

Goals, Objectives, and Description of the Methodology

The amendments rebase nursing and operating rates from 2018 cost reports to 2019 cost reports and rebase the capital component from 2014 to 2019 costs, applying a cost adjustment factor to each rebased rate component to update them to 2021 costs. The capital rate component is also being restructured, with a maximum decrease from fiscal year (FY) 2021 of 10%, a maximum increase from FY2021 of 30%, and a maximum capital rate of \$37.60.

The amendments also (1) update rate adjustments by a) increasing, on average, the upward adjustment for facilities with a high percentage of Medicaid resident days, b) eliminating the low-income municipality adjustment, c) reducing the downward adjustment for low-occupancy facilities, d) applying the direct care workforce incentive adjustment beginning in rate year 2023 rather than rate year 2022; and e) establishing an adjustment to implement a maximum overall rate increase of 110% over the previous rate year; (2) update the existing Medicaid transitional add-on to enable nursing facilities to receive the add-on for new admissions from both acute *and non-acute* inpatient settings; and (3) establish new rate add-ons including a \$130 add-on for certain residents residing at a facility for 30 days or less, \$343 and \$457 add-ons for certain ventilator dependent residents at qualifying nursing facilities, and an add-on of up to \$600 for certain individuals with complex and high-cost care needs.

The amendments also include updates reflective of the evolving COVID-19 response in Massachusetts. Specifically, the amendments remove payment provisions regarding COVID-19 policies that are no longer applicable, including the dedicated COVID-19 nursing facilities provisions, the isolation space provisions, and supplemental support payments. Further, the amendments add payment provisions that enable nursing facilities to bill MassHealth separately for vaccine administration services rendered by the facility for eligible MassHealth members, and provide a one-time amnesty for nursing facilities with instances of past surveillance testing non-compliance, enabling them to continue receiving surveillance testing supplemental payments.

EOHHS is making these changes, subject to federal approval, to implement certain FY2022 budget requirements, provide clarity and support through the ongoing COVID-19 pandemic, and ensure that payments are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities. EOHHS projects the amendments will increase annual aggregate MassHealth expenditures by approximately \$67.4 million in rate year 2022 (from October 1, 2021, through September 30, 2022). The average per facility, per diem rate

increase resulting from the proposed amendments equates to approximately 4.3%, as compared to rate year 2021 rates, not including the new add-on payments or the COVID-19 vaccine administration payments.

Copies of the amended regulation and rates will be available at EOHHS or may be viewed at EOHHS's website at www.mass.gov/regulations/101-CMR-20600-standard-payments-to-nursing-facilities. Individuals may submit written comments by emailing ehs-regulations@mass.gov. Please submit electronic comments as an attached Word document or as text within the body of the e-mail with the name of the regulation in the subject line. All submissions must include the sender's full name and address. Individuals who are unable to submit comments by email should mail written comments to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. EOHHS specifically invites comments as to how the proposed amendments may impact beneficiary access to care. EOHHS will also schedule a public hearing on these amendments.

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